right after the patient's death. In some jurisdictions it is extended to his personal representatives and devisees, and in others to his heirs. *Fraser* v. *Jennison*, 42 Mich. 206; *Winters* v. *Winters*, 102 Ia. 53. On the other hand, the court above confines the right to the patient alone. This result seems sound. As the court points out, the purpose of the statute is personal — to encourage full and confidential disclosure to the physician of all facts necessary to a proper treatment. To this end it is essential that after the patient's death the seal of secrecy should remain unbroken. While it is true that an executor represents the deceased, he does so only with regard to rights of property, and not with reference to those which pertain to person and character. *Westover* v. *Ætna, etc., Co*, 99 N. Y. 56.

BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

BASIS OF LIABILITY OF PRINCIPAL FOR ACTS OF AGENT WITHIN THE APPARENT SCOPE OF HIS AUTHORITY. — Considerable discussion has arisen among text-writers as to the ground on which a principal is to be held liable for acts of his agent within the apparent scope of his authority. Mr. Ewart bases liability solely on estoppel. EWART, ESTOPPEL BY MISREPRESENTATION. In answer to this view, which is supported by a number of authorities, a recent article maintains that the principal is held on a purely contractual basis. "*Agency by Estoppel*," by Walter Wheeler Cook, 5 Columbia L. Rev. 36 (Jan. 1905).

The writer, after laying down the rule of contracts that expressed assent governs and secret intention unexpressed is ineffective, states the proposition that one may make a contract by expressing intention through an agent as well as by letter. Further, although the agent's authority is only apparent, yet the principal is bound by the intention expressed, not on the ground of estoppel but because in law they are the words of the principal. In short, his result is, that a person representing his agent to be clothed with certain authority, thereby manifests an intention to be bound by the acts of such agent, and where a third party enters into an agreement with the agent, the principal is bound by this manifested intention, even though it is contrary to the instructions given the agent. Finally, he points out that in the case where the third party enters into an executory agreement and has done nothing to alter his position, the two theories do not lead to the same result; for under the estoppel theory neither party would be bound. Unfortunately no case is cited deciding this question, although the law is stated to be that both parties are bound. Probably no decision has involved the point. It might further have been pointed out that under the estoppel theory, as the estoppel would not bind the third party, he could never be bound unless the principal ratified before the third party chose to withdraw, although that precise case does not seem to have arisen. Again the two theories would reach different results where the third party had no knowledge of the apparent scope of the authority and so could not be said to rely on any representations.

The article illustrates the danger of this unsatisfactory phrase, "apparent authority." At times it is used by the courts and text-writers to mean what is better termed "incidental authority," and then again is extended to cases where the only ground of liability seems to be estoppel. As an example of the former, a person in charge of a store may be said to have "incidental authority" to sell any of the goods, in spite of private instructions to the contrary. However, if X is appointed my agent only to sell my black horse, but I tell Y that X is authorized to sell my white horse and then X gets my white horse without my knowledge and sells it to Y, it would seem clear that X was not really my agent at all, and yet I am estopped to deny it. Some of Mr. Cook's language is broad enough to include such a case within apparent authority. If he means that, then logically he should go the next step and say that even where X has never been appointed my agent for any purpose, but I tell Y that he is my agent and Y deals

with him in that capacity, there too I am liable on principles of contract by manifesting my intention through an agent. The objection to that is, that it is making X my agent or mouthpiece when perhaps I have expressly told him that he should not be. It is saying that actual agency is not necessary in law, and that legal agency is created whenever I lead third parties to believe that X is my agent whether that is in fact true or not. That would be raising another fiction in the law to swell the already numerous collection of phenomena. However the article as applied to apparent authority in the sense of "incidental authority," is clearly sound.

Mr. Cook is not the first to advocate this contractual liability theory of the principal for the acts of the agent within the apparent scope of his authority. The same view was suggested a number of years ago by Mr. Everett V. Abbot. *The Nature of Agency*, 9 HARV. L. REV. 507, 516.

THE RECOGNITION OF FOREIGN JUDGMENTS. — In a recent article the vexed question of the extent to which recognition is to be awarded to foreign judgments is concisely and ably discussed. *To What Extent should Judicial Action by Courts of a Foreign Nation be Recognized?*[1] by the Hon. Mr. Justice Kennedy, 6 J. Soc. Comp. Leg. N. S. 106. After dwelling briefly upon the general desirability of giving effect as far as possible to foreign judgments, Judge Kennedy considers various classes of judgments with reference to their availability for such recognition. Final judgments *in personam*, he believes, are entitled to recognition whenever they have been pronounced by courts of competent jurisdiction, and their recognition will not produce effects contrary to public policy. He adheres, however, to the common law rule that a judgment obtained by fraud is not entitled to recognition. And, unless there can be a convention among states for the codification of rules concerning competence of jurisdiction, he is unwilling to accept any compromise with the continental doctrine that the question of fraud can be raised only in the court rendering the judgment. He adds that a foreign judgment offered to sustain the defense of *res adjudicata* should be deemed conclusive if it was rendered on the merits and was not obtained by fraud or upon a statute of limitations peculiar to the *lex fori*.

After noting the fact that judgments *in rem* obtained in good faith and pronounced by competent tribunals are conclusive everywhere, the writer takes up the difficulties in the way of uniformity in the recognition of foreign decrees affecting *status*, particularly marriage and divorce. As regards these, in view of the lack of agreement among courts as to the legal principles to be applied, two suggestions only are offered. The first of these is that no court other than that of the place of celebration should be regarded as competent to make a valid decree nullifying a marriage. The other is the strict rule that a decree of divorce should not be recognized if granted by any court other than that of the matrimonial domicile. This is qualified, however, by the generally acknowledged exception in the case of a wife deserted by her husband who was, up to the time of the desertion, domiciled within the jurisdiction of the court rendering the decree.

Judge Kennedy next points out that while an administrator should be, and usually is, recognized when he comes clothed with the proper authority of the foreign court, a discretionary respect to the wishes of a guardian appointed by a foreign court as to the matters with which he is concerned is all that can be reasonably expected. While expressing the belief that the committee of an insane person appointed by a foreign court should be recognized and *prima facie* should be treated as a person rightly clothed with the powers which the foreign court has purported to give him, he adds that the domestic court should retain the privilege of inquiring into the sanity of the alleged lunatic upon good cause shown. He concludes with a brief discussion of the recognition of foreign judicial action in bankruptcy proceedings. As he points out, there is at present

[1] An Address Delivered at the Recent St. Louis Congress.